In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 144

IOWA-ILLINOIS GAS AND ELECTRIC COMPANY,
PETITIONER

v.

EZRA TAFT BENSON, INDIVIDUALLY AND AS SECRETARY OF AGRICULTURE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR RESPONDENTS SUGGESTING THAT THE CASE IS MOOT

The Solicitor General, on behalf of the respondents herein, respectfully suggests to the Court that the above-entitled case has become moot.

Petitioner electric utility company (R. 3) sought a declaratory judgment and injunctive relief against respondents, the Secretary of Agriculture, and the Administrator and Deputy Administrator of the Rural Electrification Administration (R. E. A.), to prevent them from performing a loan agreement which petitioners alleged to be illegal. The agreement provided that the R. E. A. was to loan the

Central Iowa Power Cooperative certain sums of money, including approximately $120,000.00 to construct a transmission line for the use of the Greene County Rural Electric Cooperative (R. 4-5). This transmission line was intended to supply the electric power requirements of a manufacturing plant in Lehigh, Iowa (R. 5). Petitioner alleged that it would be irreparably injured if this loan agreement was carried out because it is already furnishing central station electric power service to Lehigh. The effect of construction of the new transmission line would be to deprive it of customers.

The District Court for the District of Columbia denied a preliminary injunction upon the ground that petitioner lacked standing to attack the loan, relying upon *Kansas City Power and Light Company* v. *McKay,* 96 App. D. C. 273, 225 F. 2d 924, certiorari denied, 350 U. S. 884 (R. 29).

The Court of Appeals affirmed this ruling on the authority of its decision in *Kansas City,* and remanded with directions to dismiss the complaint.

On May 28, 1957, petitioner asked this Court to review the case upon a writ of certiorari. In opposing this petition respondents advised the Court that the District Court had denied a stay pending appeal, that construction of the transmission line to Lehigh had gone forward to completion, and that all but a small percent of the funds for its construction had been advanced by R. E. A. (Brief In Opposition for Respondent, p. 3 at fn. 1).

As is shown by the affidavit of the Administrator of the R. E. A. filed herewith (Appendix, pp. 5–6), the R. E. A. has now completed performance of all its obligations to advance funds under the loan agreement for the transmission line to Lehigh. Construction of the line has been completed and the contractor paid in full.

In these circumstances we respectfully suggest that the case has become moot. There is no longer any basis for declaratory or injunctive relief even if it be assumed that petitioner has standing to challenge the loan agreement. The purpose of its suit was to prevent the R. E. A. from advancing funds for the construction of a transmission line to Lehigh, Iowa. All funds for this purpose have been advanced and the line has been constructed and paid for. Further litigation cannot change these facts.

Accordingly, it is requested that, in accordance with its established practice and in light of the suggestion made here, this Court grant the petition for certiorari, vacate the judgments below, and remand with a direction to dismiss the proceedings upon the ground that the case is now moot. *United States* v. *Munsingwear*, 340 U. S. 36, 39–40; *Cozart* v. *Wilson*, 352 U. S. 884; *Brotherhood of Locomotive Firemen and Enginemen* v. *United States*, 343 U. S. 971; *Los Angeles Building & Construction Trades Council* v. *Le Baron*, 342 U. S. 802; *Eastern Air Lines* v. *Civil Aeronautics Board*, 341 U. S. 901; *Securities and Exchange Commission* v. *Harrison*, 340 U. S. 908; *Howard* v. *United States*,

340 U. S. 898; *Garcia* v. *Landon*, 348 U. S. 866; *United States* v. *Amarillo-Borger Express, Inc.*, 352 U. S. 1028.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

FEBRUARY 1958.

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EZRA TAFT BENSON, INDIVIDUALLY AND AS SECRETARY OF AGRICULTURE, ET AL., DEFENDANTS

AFFIDAVIT OF DAVID A. HAMIL

DISTRICT OF COLUMBIA, *ss:*

David A. Hamil, being first duly sworn, deposes and says as follows:

1. I am the Administrator of the Rural Electrification Administration (hereinafter referred to as "REA"), an agency of the United States Department of Agriculture. In this capacity I have personal knowledge of certain records and documents in the official files of the REA which disclose the matters described below.

2. On September 9, 1955, a loan agreement was entered into between the REA and the Central Iowa Power Cooperative. Under the terms of this agreement, the REA was to advance to the borrower certain sums of money, including approximately $120,000 to finance the construction of an electric power transmission line (known as the "Lehigh Tap") from a point west of Boone, Iowa, to Lehigh, Iowa. This line was to be used by the Greene County Rural Electric Cooperative to serve a customer in Lehigh.

3. All funds required under the loan agreement for the construction of the "Lehigh Tap" have been requisitioned by the Central Iowa Power Cooperative and advanced by the REA. Construction of the line has been completed, and the construction contractor paid in full. There is in REA files a receipt for final payment signed by the contractor on October 14, 1957. All obligations to advance funds for the "Lehigh Tap" under the loan agreement have been performed by the REA.

[s] David A. Hamil.
DAVID A. HAMIL.

Subscribed in my presence and sworn to before me this 30th day of January, 1958.

[SEAL] [s] BESSIE H. SCRIVENER,
Notary Public.

My commission expires February 28, 1958.